

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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SAMUEL COLLINS

Plaintiff,

v.

FRED MACDONALD

Defendants.

CIVIL ACTION
NO. 03-30276-MAP

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure, the Defendant, Sheriff Fred Macdonald, moves this Court to enter summary judgment in his favor because the Plaintiff has failed to state a claim upon which relief can be granted.

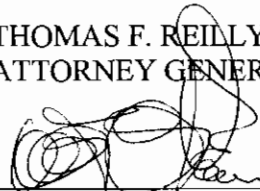
In support of such Motion, the Defendant states that since the Plaintiff Samuel Collins is no longer a resident of the Franklin County House of Corrections, he is barred from obtaining any injunctive relief. *See Affidavit of Superintendent Byron attached. Purvis v. Ponte*, 929 F.2d 822,825 (1st Cir. 1991) (holding that former inmate's action against prison officials was moot because he no longer resided at the prison).

Further, to the extent that the Plaintiff's suit is brought against a Massachusetts institution and its administrators in their official capacities, it is barred under the Eleventh Amendment to the United States Constitution, which proscribes damage suits against states without their consent. *See Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 634 (1999); *Hans v. Louisiana*, 134 U.S. 1,20 (1890) and *Greenless v. Almond*, 277 F.3d 601, 606-07 (1st Cir. 2002)

WHEREFORE, the Defendants respectfully request that summary judgment be entered in their favor in the above-entitled action as the plaintiff has failed to state any claim upon which relief can be granted.

Respectfully submitted,
Commonwealth of Massachusetts
By Its Attorney,

THOMAS F. REILLY
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I, William P. O'Neill, Assistant Attorney General, hereby certify that on October 2, 2006, I served a copy of the foregoing DEFENDANTS' MOTION FOR SUMMARY JUDGMENT by first-class Mail, postage prepaid upon plaintiff pro se, at his last known addresses and address of record, Samuel Collins, 160 Elm Street, Greenfield, MA 01301 and Samuel Collins, 629 Randall Street, Ludlow, Massachusetts 01056

A handwritten signature in black ink, appearing to read 'William P. O'Neill', is written over a horizontal line.

William P. O'Neill
Assistant Attorney General